IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 12TH DECEMBER 2006 / 21ST AGRAHAYANA 1928

WP(C).No. 27577 of 2006(G)

O.S.254/97 OF SUB COURT, THALASSERY

PETITIONER:

A.GANGADHARAN, AGED 49 YEARS,
S/O.DEVAKI, GANESH VILLA, P.O.PARAL,
THALASSERY.

BY ADV. SRI.C.P.PEETHAMBARAN

RESPONDENTS:

THE SOUTH INDIAN BANK LIMITED,
BY ITS ASST.GENERAL MANAGER, CALICUT.

BY //

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX:

EXT.P1: COPY OF EP 472/04 IN OS 254/97 ON THE FILE OF ADDL.SUB COURT, THALASSERY FILED BY RESPONDENT

EXT.P2: COPY OF RECEIPT DT.26/10/2005 ISSUED BY RESPONDENT

EXT.P3: COPY OF EA 566/06 IN EP 472/04 IN OS 254/97 ON THE FILE OF ADDL.SUB COURT, THALASSERY FILED BY PETITIONER

EXT.P4: COPY OF EA 567/06 IN EP 472/04 IN OS 254/97 ON THE FILE OF ADDL.SUB COURT, THALASSERY FILED BY PETITIONER

EXT.P5: COPY OF SCHEDULE OF SALE PROCLAMATION

EXT.P6: COPY OF APPLICATION DT.9/10/06 FOR ONE TIME SETTLEMENT FILED BY PETITIONER BEFORE RESPONDENT

//True copy//

SHW TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.27577 OF 2006

Dated 12th December 2006

JUDGMENT

Petitioner is the judgment debtor. Respondent is the decree holder. Petitioner is challenging the order of executing court directing sale of four items of properties for realisation of the decree debt. Though notice was sent to respondent/decree holder, respondent did not appear either personally or through a counsel.

2. Learned counsel appearing for petitioner was heard.

3. Case of petitioner was that for realisation of the decree debt, all the four items need not to be sold and if item No.3 of the properties is sold, it is sufficient to satisfy the decree. Petitioner has filed Exts.P3 and P4 applications, which were dismissed by the executing court on the ground that those applications were filed on the date posted for sale of the properties. In the objection to draft sale papers, petitioner sought to raise a contention that

entire properties need not to be sold. The value of the properties shown in the draft sale papers was also disputed. In Ext.P7 application, petitioner sought an order from the executing court to sell only item No.3 of the property. That was also dismissed for the reason that application was filed on the date when execution petition was posted for sale.

4. Petitioner has also contended that one time settlement scheme is available with respondent/decree holder Bank and petitioner sent Ext.P6 representation to the decree holder bank and petitioner may be permitted to avail the benefit under the one time settlement scheme.

5. Rule 64 of Order XXI of Code of Civil Procedure casts an obligation on the executing court before ordering sale of the attached property to consider whether sale of all the property or properties is necessary and whether by sale of part of the property or one of the properties the decree could be satisfied. Unless court is satisfied that for realisation of the decree debt the whole properties are to be sold, executing court is to sell only that part of the property which is necessary to satisfy the decree. Rule 64 is not a discretion of the court.

Executing court has not considered that aspect. Therefore orders passed by executing court dismissing Exts.P7 and P8 applications are set aside and executing court is directed to consider whether by sale of item No.3 of the properties the entire decree debt could be satisfied or not. If it is sufficient, executing court may direct sale of only that item of the properties. If after sale, the amount realised is insufficient to satisfy the decree, executing court may proceed to sell the other properties. So also, while proclaiming sale of properties as provided under second proviso to sub Rule 2 of Rule 66 of the Code though executing court is not to arrive at a value of the property, the value claimed by judgment debtor shall necessarily be shown in the sale papers. Executing court may direct the decree holder to show the value claimed by petitioner also. First respondent is also directed to consider Ext.P6 application and take appropriate decision, within one month from the date of receipt of copy of this judgment.

Writ petition is allowed.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.